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Federal Agencies

January 30, 2006

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Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

**Art Unit 1645**

Re: U.S. Utility Patent Application  
Application No. 10/658,688; Filed: September 10, 2003  
For: **Codon-Optimized Polynucleotide-Based Vaccines Against *Bacillus anthracis* Infection**  
Inventor: Gary G. HERMANSON  
Our Ref: 1530.0460002/EJH/J-H

Sir:

Transmitted herewith for appropriate action are the following documents:

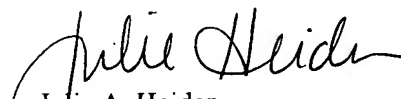
1. Reply to Restriction Requirement; and
2. One (1) Return postcard.

It is respectfully requested that the attached postcard be stamped with the date of filing of these documents, and that it be returned to our courier. In the event that extensions of time are necessary to prevent abandonment of this patent application, then such extensions of time are hereby petitioned.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

  
Julie A. Heider  
Agent for Applicant  
Registration No. 54,161

J-H/kad  
Enclosures

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Gary G. HERMANSON

Appl. No.: 10/658,688

Filed: September 10, 2003

For: **Codon-Optimized Polynucleotide-  
Based Vaccines Against *Bacillus*  
*anthracis* Infection**

Confirmation No.: 3461

Art Unit: 1645

Examiner: Baskar, P.

Atty. Docket: 1530.0460002/EJH/J-H

**Reply to Restriction Requirement**

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

In reply to the Office Action dated **December 29, 2005**, Applicant hereby provisionally elects to prosecute the claims of **Group II**, represented by claims 174 and 214. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed. Applicant reserves the right to prosecute the non-elected subject matter in related divisional applications.

This election is made **with traverse**.

With respect to the Examiner's division of the claims into two Groups and the reasons stated therefor, Applicants respectfully traverse. For example, Groups I and II are related as between a polynucleotide and compositions comprising said polynucleotide (Group I) and a method of treating anthrax comprising the administration of compositions comprising said polynucleotides (Group II). Applicants submit that to search and examine the subject matter of these two Groups together would not be a serious burden on the Examiner. A search for publications that disclose the recited

polynucleotides would lead the Examiner to references that disclose methods of using the recited polynucleotides for treating anthrax infection. Accordingly, it would not be an undue burden for the Examiner to search Groups I-II together. The M.P.E.P. §803 (Eighth Edition, Rev. August, 2001) states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Thus, in view of the M.P.E.P. §803, Applicants respectfully request that all claims be searched and examined in the subject application. Therefore, reconsideration and withdrawal of the Restriction Requirement, and consideration and allowance of all pending claims, are respectfully requested.

Additionally, the Examiner has requested election of a polynucleotide encoding a single polypeptide. Applicant hereby provisionally elects a polynucleotide encoding the polypeptide of **SEQ ID NO:4**, represented by claims 174 and 214. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed. Applicant reserves the right to prosecute the non-elected subject matter in related divisional applications.

This election is made **with traverse**.

With respect to the Examiner's requirement for an election of one polynucleotide encoding a single polypeptide and the reasons stated therefor, Applicants respectfully traverse with respect to SEQ ID NOs:2, 4, 6, 7, 8, 10, 12, 13, 16, 26, and 40. For

example, SEQ ID NOs: 2, 6 and 8 are various fragments of the full-length anthrax protective antigen of SEQ ID NO:4.

Even assuming, *arguendo*, that SEQ ID NOs: 2, 4, 6 and 8 represent distinct or independent inventions, Applicants submit that to search and examine the subject matter of these sequences together would not be a serious burden on the Examiner. For example, given that SEQ ID NOs: 2, 6, and 8 are fragments of SEQ ID NO:4 and that SEQ ID NOs: 2, 6, and 8 share a common structural motif, publications which disclose SEQ ID NO:4 would also disclose the other sequences. Accordingly, it would not be an undue burden for the Examiner to search these sequences together. The M.P.E.P. §803 (Eighth Edition, Rev. August, 2001) states:

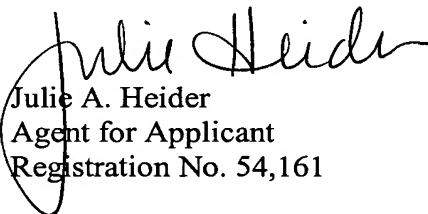
If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Thus, in view of the M.P.E.P. §803, Applicants respectfully request that at least SEQ ID NOs: 2, 4, 6 and 8 be searched and examined in the subject application. Therefore, reconsideration and withdrawal of the Restriction Requirement, at least with regard to SEQ ID NOs:2, 4, 6 and 8, and consideration and allowance of all pending claims, are respectfully requested.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

  
Julie A. Heider  
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Registration No. 54,161

Date: January 30, 2006

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